

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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2023 MAY 12 PM 3:03

SHENG-WEN CHENG,

Plaintiff,

-against-

DEPARTMENT OF JUSTICE, and
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

No. **23 CV 3983**
Hon.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. Plaintiff, Sheng-Wen Cheng ("Plaintiff Cheng"), brings this action seeking to enjoin Defendants, the Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI"), from improperly withholding records requested by Plaintiff Cheng, pursuant to Freedom of Information Act ("FOIA") and the Administrative Procedure Act ("APA").

2. The FOIA, 5U.S.C.552, requires agencies of the federal government to release information to the public upon request, unless one of the nine specific statutory exemptions applies. 5U.S.C.552(b).

3. After receiving a FOIA request, an agency has 20 working days to respond. 5U.S.C.552(a)(6)(A).

4. Within 45 days after an agency's FOIA determination letter, the requesting party may file an administrative appeal. After receiving a

"final administrative response", or non-response after 20 days from filing the appeal to the appropriate federal agency, the requesting party may seek judicial review in federal courts. 5U.S.C.552(a)(4), (a)(6)(A)(ii).

5. The Court may assess against the United States reasonable attorney's fees and other litigation costs reasonably incurred by plaintiff in bringing a FOIA complaint if the court orders relief, or if the federal agency voluntarily changes its position regarding the requested materials. 5U.S.C.552(a)(4)(E)(ii).

JURISDICTION

6. This Court has the jurisdiction, upon receipt of a complaint to "...enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5U.S.C.552(a)(4)(B).

7. This Court also has the jurisdiction to set aside an agency action if it is arbitrary, not in accordance with law, an abuse of discretion, or otherwise. 5U.S.C.706(2)(A).

8. This Court lastly has the subject matter jurisdiction under 28U.S.C.1331.

VENUE

9. Venue is proper under 5U.S.C.552(a)(4)(B), as Plaintiff Cheng retains domicile in New York, New York, where the complainant resides.

PARTIES

10. Plaintiff Sheng-Wen Cheng, is a federal prisoner currently incarcerated at Rochester, Minnesota, but retains domicile in New York, New York. Plaintiff Sheng-Wen Cheng is also an advocate of U.S. civil and Constitutional rights.

11. Defendant Department of Justice, is a Department of the Executive Branch of the U.S. Governemnt, and it has control over Defendant FBI. The DOJ is an agency within the meaning of 5U.S.C.552(f).

12. Defendant Federal Bureau of Investigation, is a component of the DOJ, and is an agency within the meaning of 5U.S.C.552(f). The FBI has possession, custody, or control of the records that Plaintiff Cheng seeks.

STATEMENT OF FACTS

13. On August 8, 2022, pursuant to a search warrant, FBI executed an unannounced search of ex-President Trump's residence, and seized approximately 11,000 documents and 1,800 other items from the office and storage room of ex-President Trump's residence. The seized property is generally categorized on the inventory as twenty-seven boxes containing documents, with and without classification markings, along with photographs, other documents, and miscellaneous materials.

14. On November 3, 2022, Plaintiff Cheng sent a FOIA request to FBI, requesting all unclassified-documents that ex-President Trump took to his residence (Mar-a-Lago) from the White House. (Exhibit A)

15. On November 17, 2022, Plaintiff Cheng received a letter from FBI, stating that it had received Plaintiff Cheng's FOIA request and is processing it. (Exhibit A)

16. On January 9, 2023, Plaintiff Cheng received a letter from FBI, stating that the documents that Plaintiff Cheng requested are exempted under 5U.S.C.(b)(7)(A), because there is a pending or prospective law enforcement proceeding relevant to the records and release of the records could reasonably be expected to interfere with the enforcement proceedings. (Exhibit B)

17. On February 3, 2023, Plaintiff Cheng filed an administrative appeal to the Office of Information and Policy ("OIP") regarding FBI's January 9, 2023 letter.

18. On February 21, 2023, OIP received Plaintiff Cheng's appeal, and assigned tracking number A-2023-00805. (Exhibit C)

19. To date, OIP has not responded to Plaintiff Cheng's appeal, and DOJ has not initiated any criminal enforcement actions against ex-President Trump for his unlawful removal of classified and other presidential documents.

20. Plaintiff Cheng thus has exhausted his administrative remedy since OIP failed to respond to Plaintiff Cheng's appeal within 20 days after receiving the appeal, nor did it provide any explanations for its delay of response.

COUNT I

FAILURE TO PRODUCE RESPONSIVE RECORDS

IN VIOLATION OF FOIA

21. Incorporate paragraphs 1 to 20.

22. All Defendants have violated the FOIA, by improperly withholding records responsive to Plaintiff Cheng's request to the FBI.

23. The information sought by Plaintiff Cheng is not exempt from disclosure under the FOIA, and is not exempt on the ground cited by the Defendants, as the exemptions are optional, and the records sought by Plaintiff Cheng have been subjects of an official public knowledge.

24. Additionally, DOJ and FBI never announced that there is or even a possibility of a criminal investigation against ex-President Trump, for the documents that Plaintiff Cheng requested; thus, the exemption cited by the Defendants is not applicable.

25. The records and information sought by Plaintiff Cheng cannot be compiled independently by Plaintiff Cheng and, unless this Court grants the relief requested and compels disclosure, Plaintiff Cheng has no remedy at law or otherwise.

COUNT II

SEARCH WAS UNREASONABLE AND INADEQUATE

IN VIOLATION OF FOIA

26. Incorporate paragraphs 1 to 20.

27. All Defendants have violated the FOIA, by conducting a search that was unreasonable and inadequate, in response to Plaintiff Cheng's request to the FBI.

28. It is unreasonable and inadequate that among the entire 11,000 documents and 1,800 items that were taken from ex-President Trump's residence, none of those documents can be released to Plaintiff Cheng, after being searched and examined by the FBI.

29. The information and documents sought by Plaintiff Cheng cannot be compiled independently by Plaintiff Cheng and, unless this Court grants the relief requested and compels the FBI to conduct a reasonable and adequate search, Plaintiff Cheng has no remedy at law or otherwise.

COUNT III

IN VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

30. Incorporate paragraphs 1 to 20.

31. All Defendants' failure to produce responsive records, constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA.

32. All Defendants' failure to conduct a reasonable and adequate search of responsive records, constitutes agency action not compliant with established laws, in violation of APA.

33. All Defendants' failure to produce responsive records is arbitrary, capricious, an abuse of discretion, not in accordance with federal laws, and without observance of procedure required by the law, in violation of the APA.

34. All Defendants' failure to conduct a reasonable and adequate search of responsive records is arbitrary, capricious, an abuse of discretion, not in accordance with federal laws, and without observance of procedure required by the law, in violation of the APA.

35. Plaintiff Cheng has no adequate remedy at law, and will suffer serious and irreparable harms to his APA right unless the Defendants are continuing withholding responsive documents, and failing to conduct a reasonable and adequate search of responsive documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cheng respectfully requests this Court will:

- a) Declare all Defendants have violated the FOIA and APA, by failing to satisfy Plaintiff Cheng's FOIA request to the FBI;
- b) order all Defendants to conduct a reasonable and adequate search of the responsive documents immediately;
- c) order all Defendants to disclose all requested documents and make copies available to Plaintiff Cheng immediately;

- d) award the costs of this suit and attorney's fees; and
- e) grant any other relief that this Court deems to be just, equitable, and proper.

I declare under the penalty of perjury that the foregoing allegations are true to the best of my knowledge.

Dated: Rochester, Minnesota
May 4, 2023

Respectfully Submitted,



Sheng-Wen Cheng
No. 05261-509
Federal Medical Center
PMB 4000
Rochester, MN, 55903



U.S. Department of Justice

EXHIBIT A

Federal Bureau of Investigation
Washington, D.C. 20535

November 17, 2022

SHENG-WEN CHENG
**05261-509
NUMBER K1
POST OFFICE BOX 1000
FEDERAL CORRECTION INSTITUTION
SANDSTONE, MN 55072

FOIPA Request No.: 1572650-000
Subject: Unclassified Documents Ex-
President Trump Took to Mar-A-Lago
Residence

Dear Sheng-Wen Cheng:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI. Below you will find check boxes and informational paragraphs about your request, as well as specific determinations required by these statutes. Please read each one carefully.

- Your request has been received at FBI Headquarters for processing.
- You submitted your request via the FBI's eFOIPA system.
- Future correspondence about your FOIPA request will be provided in an email link unless the record file type is not supported by the eFOIPA system.
- Correspondence for requests regarding living individuals, or containing audio, video, and high resolution photographs cannot be sent through the eFOIPA system. Future correspondence about your FOIPA request will be delivered through standard mail.
- The subject of your request is currently being processed and documents subject to the FOIPA will be released to you upon completion.
- Release of responsive records subject to the FOIPA will be posted to the FBI's electronic FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- Your request for a public interest fee waiver is under consideration and you will be advised of the decision if fees are applicable. If your fee waiver is not granted, you will be responsible for applicable fees per your designated requester fee category below.

U.S. Department of Justice



EXHIBIT B

Federal Bureau of Investigation
Washington, D.C. 20535

January 9, 2023

SHENG-WEN CHENG
**05261-509
NUMBER K1
POST OFFICE BOX 1000
FEDERAL CORRECTION INSTITUTION
SANDSTONE, MN 55072

FOIPA Request No.: 1572650-000
Subject: Unclassified Documents Ex-President Trump
Took to Mar-A-Lago Residence

Dear Sheng-Wen Cheng:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request. Please see the paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

The FBI has completed its search for records subject to the FOIPA that are responsive to your request. The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records about yourself or any third party individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

EXHIBIT C

February 21, 2023

Sheng-Wen Cheng
Register No. 05261-509
FCI P.O. Box 1000
Sandstone, MN 55072

Dear Sheng-Wen Cheng:

This is to advise you that the Office of Information Policy of the U.S. Department of Justice received your administrative appeal from the action of the Federal Bureau of Investigation regarding Request No. 1572650 on 02/17/2023.

In an attempt to afford each appellant equal and impartial treatment, OIP has adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number A-2023-00805. Please refer to this number in any future communication with OIP regarding this matter. Please note that if you provided an email address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through Freedom of Information Act STAR, you may also check the status of your appeal by logging into your account.

Sincerely,

Priscilla Jones

Priscilla Jones
Supervisory Administrative Specialist

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SHENG-WEN CHENG

(b) County of Residence of First Listed Plaintiff New York, New York
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

DEPARTMENT

APPENDIX B, CIVIL COVER SHEET

OF JUSTICE et al
County of Residence of First Listed Washington, D.C.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|--------------------------------|---|----------------------------|------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | DEF <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Federal Decision Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

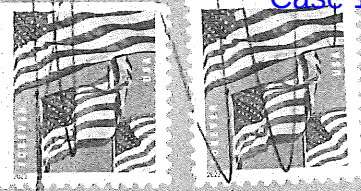
FOIA, APA

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE May 4, 2023 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY: RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



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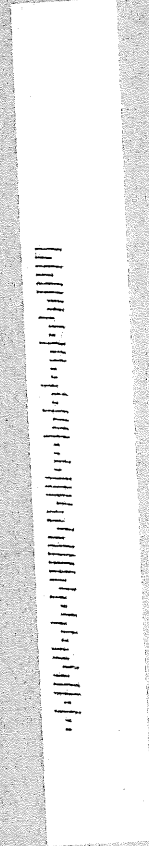
Sheng-Wen Cheng
No. 05261-509
Federal Medical Center
PMB 4000
Rochester, MN, 55903



Legal Mail

↔05261-509↔
Daniel Patrick
Moynihan U.S. Courthouse
500 Pearl ST
NEW YORK, NY 10007
United States

USMP
SDNY



FEDERAL MEDICAL CENTER
PO BOX 4600
ROCHESTER, MN 55903-4600
DATE MAY 04 2023

The enclosed letter was processed through special mail procedures for forwarding to you. The letter has been neither opened or inspected. If the writer raises a question of problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee please return the enclosure to the above address.